

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Knoxville Tourism & Sports Corporation) Personal Property Account No. 1339627) Claim of Exemption)	Knox County
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INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal pursuant to Tenn. Code Ann. section 67-5-212(b)(2) from the denial of an application for exemption of the subject property from ad valorem taxation. The application was filed with the State Board of Equalization ("State Board") on October 19, 2005. By letter dated May 3, 2006, State Board staff attorney Emily Bennett denied the application on the ground that:

The property is used primarily to promote or further tourism or economic development in Knoxville/Knox County. This does not qualify as a charitable use of the property.

The Knoxville Tourism and Sports Corporation ("KTSC"), the applicant, appealed this initial determination to the State Board on August 1, 2006. The undersigned administrative judge conducted a hearing of this matter on September 20, 2006 in Knoxville. KTSC was represented by James M. McCarten, Esq., of Woolf, McClane, Bright, Allen & Carpenter, PLLC (Knoxville). Deputy Knox County Law Director Susan E. Crabtree appeared on behalf of the Knox County Assessor of Property.

Findings of Fact and Conclusions of Law

The Tennessee General Assembly has authorized each county in this state to appropriate funds for the declared public purpose of "advertising the commercial, social, agricultural, industrial, scenic, recreational, historical, educational and other advantages of such county, and the points of interest and attractions therein, for tourist promotion." Tenn. Code Ann. section 5-9-201(b). This appeal raises the question of whether a "501(c)(3)" corporation with which local governments have contracted for the performance of such services qualifies for a "charitable" property tax exemption under Tenn. Code Ann. section 67-5-212.

KTSC, formerly known as the Greater Knoxville Sports Corporation ("GKSC"), was incorporated in this state on June 22, 2004.¹ According to paragraph 9c of KTSC's Charter:

¹As explained by KTSC Vice President/Finance Kathy Williams in a letter submitted with the application for exemption, the corporation was formed in the wake of GKSC's merger with the Knoxville Convention & Visitors Bureau in August, 2002. All of the predecessor corporation's assets were transferred to KTSC.

The Corporation is primarily organized for the charitable and educational purposes of promoting the social welfare and lessening the burdens of local government by serving as the single voice for the governments and citizens of the City of Knoxville, Tennessee (the "City") and of Knox County, Tennessee (the "County") with regard to the promotion of tourism, sports and recreational activities in the area and with regard to advertising the commercial, social, agricultural, industrial, scenic, recreational, historical, educational and other advantages, points of interest and attractions of the City and/or the County, with the focus of such efforts to, among other goals, enhance the quality of life for the citizens of the City and the County, and otherwise enhance, promote and stimulate economic and community development within the City and the County.

The Internal Revenue Service has recognized KTSC as a tax-exempt "public charity" under section 501(c)(3) of the Internal Revenue Code.²

KTSC's affairs are managed by a 23-member Board of Directors. Two of the Board members are appointed by the City; and five are appointed by the County. The remainder of the Board consists of four "organizational" directors (representing the University of Tennessee, Knoxville; the Knoxville Tourism Alliance; the Knox Area Chamber Partnership; and the Arts and Culture Alliance of Greater Knoxville) and 12 at-large members.

The equipment, machinery, and other tangible personal property in question are located at KTSC's headquarters on South Gay Street in downtown Knoxville. There, KTSC operates the Knoxville/Knox County Visitors Center and employs a staff of over 30 full-time personnel. KTSC is funded entirely by the revenue from its three-year professional services contracts with the County and City.³ The County contract charges KTSC with the promotion of tourism and sports-related activities generally, and sets the contractor's compensation at 45% of the County's hotel occupancy tax collections. The City contract, on the other hand, identifies KTSC's "primary mission" as marketing and booking the newly-built Knoxville Convention Center "to maximize revenue generation for the City." In addition to a percentage of the hotel occupancy tax, the City must pay KTSC a fixed annual sum that gradually decreases from \$375,000 in fiscal year 2006 to \$275,000 in fiscal year 2008. But depending on its overall level of success, KTSC may also earn substantial performance payments and bonuses – up to as much as \$575,000 in fiscal year 2008.

Characterizing KTSC's contractual relationship with the City and County as "more like a partnership," Mr. McCarten contended that the corporation is a charitable institution within the meaning of Tenn. Code Ann. section 67-5-212. In his view, KTSC is "lessening the burdens of

²The IRS deemed KTSC to be a "Type 3" supporting organization: i.e., one that is "operated in connection with one or more publicly supported organizations."

³Both of these contracts explicitly refer to KTSC as an "independent contractor" – not a governmental employee.

government” in the manner contemplated by the Tennessee Supreme Court in Baptist Hospital v. City of Nashville, 3 S.W.2d 1059, 1060 (Tenn. 1928).⁴

Article II, section 28 of the Tennessee Constitution permits the legislature to exempt from taxation property which is “held and used for purposes purely religious, charitable, scientific, literary, or educational.” Under this authority, the General Assembly has decreed that:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, charitable, scientific, or nonprofit educational institution which is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists....

Tenn. Code Ann. section 67-5-212(a)(1)(A).

In the context of this statute, the phrase *purely and exclusively* has been construed to mean that the property in question must be put to a use which is “directly incidental to or an integral part of” an exempt purpose of the institution. Methodist Hospitals of Memphis v. Assessment Appeals Commission, 669 S.W.2d 305 at 307 (Tenn. 1984).

For property tax exemption purposes, a charitable institution is broadly defined in Tenn. Code Ann. section 67-5-212(c) to include “any nonprofit organization or association devoting its efforts and property, or any portion thereof, exclusively to the improvement of human rights and/or conditions in the community.”

In Tennessee, contrary to most other states, property tax exemptions are liberally construed in favor of religious, charitable, scientific, and nonprofit educational institutions. See, e.g., Youth Programs, Inc. v. State Board of Equalization, 170 S.W.3d 92 (Tenn. Ct. App. 2004). Nonetheless, as the party appealing from the initial determination on its application for exemption, KTSC has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

In Memphis Chamber of Commerce v. City of Memphis, 232 S.W. 73 (Tenn. 1921), a chamber of commerce which “encourage(d) the location of new industries and enterprises in the city of Memphis” and “entertain(ed) conventions and distinguished visitors who may visit the city” sought exemption of its office building from taxation. The Supreme Court of Tennessee held that the nonprofit corporation was not a charitable and/or educational institution, finding

⁴In the Baptist Hospital case, the Court declared that:

Probably the most comprehensive and carefully drawn definition of a charity that has ever been formulated is that it is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies of disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government

3 S.W.2d at 1060.

that "its primary object is to promote the business and commercial interests of the city of Memphis." 232 S.W. at 74.

While acknowledging that Memphis Chamber of Commerce has never been overruled, counsel for the appellant argues that the instant case is distinguishable because "KTSC is not and never has been the equivalent of a business league or chamber of commerce" Post-Hearing Brief, p. 8. In this regard, Mr. McCarten emphasizes the distinctions which have been drawn among various types of tax-exempt organizations under the Internal Revenue Code. Unlike chambers of commerce and other "501(c)(6)" organizations, he stresses, KTSC enjoys exemption from federal income taxation as a charitable organization.

Yet, significantly, Tenn. Code Ann. section 5-9-203(3) specifically authorizes counties to enter into contracts with "chambers of commerce" to "carry out the intent and purposes of this part." Moreover, an institution's 501(c)(3) status does not guarantee eligibility for property tax exemption under Tenn. Code Ann. section 67-5-212. For example, in American Heritage Apartments, Inc. v. Bennett, 205 WL 1996623 (Tenn.Ct.App. 2005), a Tennessee 501(c)(3) corporation ("AHA") claimed exemption of an apartment complex which it had purchased from the Resolution Trust Corporation (RTC). Although AHA had committed to rent at least 35% of the units to low- and very low-income tenants, the Tennessee Court of Appeals upheld the denial of exemption on the rationale that:

...(AHA's) reason for doing so is not the benevolence of the organization but the fact that such is a condition of the federal government's low-interest loan to AHA. Consequently, AHA's operation does not lessen the burden of government by making housing available to low-income persons at below-market rates; rather it is actually a condition of AHA's federal funding. AHA purchased the property at a discount, received a rehabilitation loan to refurbish the property and is compensated for all of the apartments it rents, though some are at a reduced rate.

It is difficult to accept the premise that Tenn. Code Ann. section 5-9-201 imposes a "burden" on local governments on the order of housing the poor; feeding the hungry; or caring for the sick or disabled. On its face, this enactment merely permits a county governing body "in its discretion" to expend public funds for tourist promotion. That the legislature has deemed such function to be a "public purpose" hardly constitutes the equivalent of a mandate. Nor does the fact that the subject property would undoubtedly be tax-exempt if it were owned by a governmental entity and put to the same use necessarily make such use a *charitable* one. As the Tennessee Court of Appeals has observed:

The exemption of government owned property is not comparable to the exemption granted charities. The government is entitled to exemption because it is the government, not because the use is a charitable use. The government may use its property for a charitable or non-charitable use, but it remains exempt. **The exemption for charitable use by a charity is narrowly defined and depends upon the use.**

Memphis Development Foundation v. State Board of Equalization, 653 S.W.2d 266, 270 (Tenn.Ct.App. 1983). [Emphasis added.]

Further, even assuming that the services KTSC has undertaken to perform would otherwise have to be provided by the County and City themselves, the administrative judge is not persuaded by the evidence of record that the corporation actually lessens the burden on those local governments. Like the property owner in American Heritage Apartments, KTSC appears to be fully compensated for its efforts; there is no indication that the corporation has conferred any sort of “gift” on the County or City. And, particularly at this early stage of KTSC’s existence, the administrative judge cannot legitimately infer from Ms. Williams’ brief testimony that the corporation has achieved (or will achieve) better results than could those local governments through utilization of their own resources.

Though obviously not a governmental entity, KTSC may be likened to an industrial development corporation insofar as its overriding objectives are to stimulate business activity and thereby generate additional tax revenue for local governments. Those are undoubtedly worthy aims from which the general public may indirectly benefit; however, the administrative judge cannot conclude that KTSC is a truly charitable institution under the Baptist Hospital Court’s oft-cited definition.

Order

It is, therefore, ORDERED that the initial determination of the State Board’s staff attorney be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is

requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 26th day of October, 2006.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: James McCarten, Esq., Woolf, McClane, Bright, Allen & Carpenter, PLLC
Broadus Hubbs, Director, Exemption Department, Knox County Assessor's Office
Susan E. Crabtree, Knox County Deputy Law Director

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